

ORIGINAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

R E C E I V E D
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SEP 08 2009

FILED _____
DOCKETED _____ DATE _____ INITIAL _____

United States of America,
Plaintiff-Appellant,

v.

No. 05-10067

Comprehensive Drug Testing, Inc.
Defendant-Appellee.

Major League Baseball Players Association,
Petitioner-Appellee,

v.

No. 05-15006

United States of America,
Respondent-Appellant.

In Re: Search Warrants Executed
on April 8, 2004 at CDT Inc.

No. 05-55354

NON-PARTY MOVANT'S NOTICE OF PENDING MOTION

Non-Party Journalist Joshua A. Gerstein ("Movant") hereby gives notice that Movant's Motion to Unseal filed November 23, 2005 in the above-captioned cases remains pending before this Court.

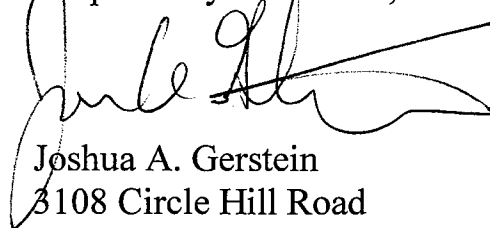
Movant's Motion was initially resolved by the panel opinion filed in these consolidated cases. See United States v. Comprehensive Drug Testing, Inc. ("CDT"), 513 F. 3d 1085, 1141 (9th Cir. 2008). See also Id. at 1148-49, (THOMAS, J., concurring in part, and dissenting in part on other grounds).

However, in a subsequent order granting rehearing en banc, the Court appeared to vacate or withdraw the earlier panel opinion. See U.S. v. CDT, 545 F. 3d 1106 (9th Cir. 2008).

The Court's en banc opinion recently issued in these cases does not address Movant's Motion to Unseal. See U.S. v. CDT, ___ F 3d. ___, 2009 WL 2605378 (9th Cir. August 26, 2009) (en banc).

In light of the foregoing, Movant prays that this Court grant or otherwise act upon his Motion, which has now been pending for nearly four years.

Respectfully Submitted,



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Non- Party Movant, Pro Se

Date: September 4, 2009

PROOF OF SERVICE

The undersigned hereby certifies that on the date noted below the attached notice was served by sending a true copy thereof via First-Class Mail to the offices of each of the following counsel at their address of record:

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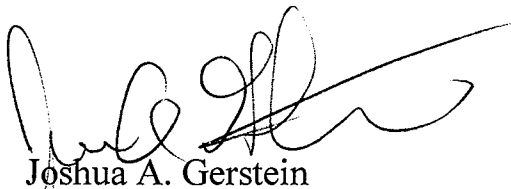
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Since two of the three docket sheets in these consolidated appeals remain under seal and the Clerk has refused Movant access to the pleadings in all of the cases, Movant cannot be certain that this list reflects all counsel of record in the cases. However, Movant is prepared to make any additional service the Court may deem necessary.



Joshua A. Gerstein

September 4, 2009